

1 THE COURT: Mr. Momyer, I remind you, you are
2 under the same oath that you took earlier today. All
3 right?

4 THE WITNESS: Yes.

5

6 REDIRECT EXAMINATION

7 BY MR. ROBERTSON:

8 Q Mr. Momyer, do you still have your December 9,
9 2009 deposition?

10 A Yes, I do.

11 Q If you could, I'd like you to go to page 65
12 because you were asked some questions by Mr. McDonald
13 there concerning the question that begins at page 65,
14 line 22, going over to page 66, line 9. Are you with
15 me?

16 A Yes.

17 Q That deposition was taken over a year ago?

18 A That's correct.

19 Q At some point in time did you have an opportunity
20 after the deposition was taken to review your
21 testimony?

22 A Yes, I did.

23 Q Were you able to prepare what's called an errata
24 sheet to correct any issues or problems or mistakes
25 that were made with respect to that deposition?

1 A Yes, I did.

2 Q Prior to preparing that errata sheet to make any
3 corrections, did you speak to anybody, any counsel for
4 ePlus, with respect to how you should make any
5 corrections?

6 A No.

7 Q Did you, in fact, make corrections?

8 A Yes.

9 MR. ROBERTSON: May I approach the witness,
10 Your Honor?

11 THE COURT: The court security officer will
12 get it.

13 Q I've handed you a document, which is entitled,
14 Douglas A. Momyer, December 9, 2009, acknowledgment of
15 deponent. Do you see that?

16 A Yes.

17 Q The first line says, "I, Douglas A. Momyer, hereby
18 certify that I have read the foregoing transcript of
19 my testimony and that same is true and correct to the
20 best of my knowledge and belief except as follows: do
21 you see that?

22 A Yes.

23 Q Is that your signature at the bottom of this
24 document?

25 A Yes, it is.

1 Q And this was sworn to and subscribed on the 20th
2 of January, 2010, correct?

3 A Correct.

4 Q The question Mr. McDonald asked you at page 65,
5 let me repeat it, if I could. It says, "Do you have
6 an understanding that the electronic sourcing patterns
7 are essentially a requisition and purchasing system
8 that, for example, can be a RIMS system that is set up
9 to communicate with a catalog database and a search
10 engine such as the IBM Technical Viewer 2 product?"
11 Then I interposed an objection. And there was some
12 colloquy. You asked to have question repeated. You
13 gave the answer: "Yes." Do you see that?

14 A Yes, I do.

15 Q Did you address that question in your
16 acknowledgment of deponent?

17 A Yes, I did.

18 Q What did you say, sir?

19 A No, the invention was much more than RIMS plus a
20 search engine.

21 Q What did you give for why you gave that
22 correction?

23 A I misunderstood the question.

24 Q When is the first time you brought this to my
25 attention?

1 A I don't think -- oh, today. I think someone else
2 brought it. I didn't bring it directly to your
3 attention.

4 Q And do you know whether or not it was the
5 stenographer from Merchant & Gould that was present to
6 record your deposition?

7 A No.

8 THE COURT: You mean they had their own court
9 reporter?

10 MR. ROBERTSON: Well, the one they had
11 retained, Your Honor.

12 THE COURT: Well, that's an independent
13 person they retained. It's not somebody who works for
14 them.

15 MR. ROBERTSON: I understand.

16 BY MR. ROBERTSON:

17 Q What's the difference between a search in the RIMS
18 system, which I understood you to say was a lookup,
19 and a search in the electronic sourcing system that is
20 the subject of the patents that are at issue here?

21 A Well, there's a significant difference. The
22 search in RIMS system is a word-for-word exact match
23 or it is a character-for-character match, and if any
24 of that is not present, it fails the match and it
25 isn't found.

1 A search in the catalog is more of a text search
2 that searches for -- it's really based upon the
3 criteria that you give as the search criteria.

4 MR. McDONALD: I object to this because I
5 think we're getting into this issue of search under
6 the claims and catalog under the claims.

7 THE COURT: Well, search has been construed.

8 MR. ROBERTSON: No, it's not, Your Honor.

9 THE COURT: Just a minute. Means for
10 searching is in the '683, Claim Three, and '172, Claim
11 One, is that what you're asking about?

12 MR. ROBERTSON: No, sir. Mr. McDonald asked
13 if the search in the RIMS patent was the same as the
14 search in the electronic sourcing patent. The witness
15 said there's a difference, but he wasn't permitted to
16 say that the difference is. I'm just asking him what
17 is the difference.

18 MR. McDONALD: I don't believe I was given a
19 chance to ask that question.

20 MR. ROBERTSON: Let me ask it another way,
21 Your Honor.

22 THE COURT: Yes, I think you should.

23 BY MR. ROBERTSON:

24 Q Did the RIMS system include a search program?

25 A No, it did not.

1 Q I'd like you to go and look at table 1 in
2 Plaintiff's Exhibit No. 10, which is this '989 patent
3 which you're the inventor, and there were a number of
4 product types there. And you testified about product
5 types 5 and 6.

6 Let me direct you to column 11 of the '989 patent
7 starting at about line 25 down to about line 31 under
8 the heading "sourcing." Actually, let me apologize.
9 Let's just go back and identify what product types 05
10 and 06 are in table 1 in column 6.

11 A Do you want me to --

12 Q Yeah, if you would just read it for the jury,
13 please?

14 A Product type 05, third-party item which CSR or
15 customer orders. Product type 06, customer-owned item
16 located in customer warehouse at or next customer
17 site.

18 Q And you referred us to column 11 in the '989
19 patent beginning at about line 14 about product type
20 05?

21 A Yes.

22 Q Now, I'd like to direct you back down to this
23 column with the heading that says "sourcing." Can you
24 read that to the jury, sir?

25 A The whole --

1 Q Yes. The first paragraph. I'm sorry. From line
2 26 to looks to be about 31.

3 A After all of the items for a requisition have been
4 entered, the next step is that of sourcing the
5 requisition. Sourcing the requisition is the process
6 of determining what inventory will be used to fill the
7 requisition. Pricing is also performed in this step
8 when it's called for. Example, except for all product
9 types -- for all product types except for 05 and 06.

10 Q Except for 05 and 06. Is that consistent or
11 inconsistent with what you told Mr. McDonald?

12 A I don't remember what I told Mr. McDonald.

13 Q That's a fair question. Is it consistent with
14 your understanding as to how product types 05 and 06,
15 the sourcing could happen except for those two -- let
16 me rephrase that. That was a horrible question. Is
17 this section that you read consistent with your
18 understanding as to how the RIMS system operated?

19 A Yes.

20 Q Let me direct you to column 18 of the '989 patent
21 in Plaintiff's Exhibit No. 10 starting at about line
22 51 and going down to line 54. And if you could read
23 that, please, for the jury.

24 A After the purchase order data block is described
25 in step 338 is transmitted to host computer over the

1 data link described above local computer 40 waits for
2 a response from the host as shown in block 340.

3 Q What if anything does that have to do with
4 generating P.O. orders, if anything?

5 A Well, that's the process that RIMS was using to
6 transmit information to the host to the build the
7 P.O.s. So all of the items that were on a requisition
8 would have been put in a data block along with the
9 affinity of the customer and passed up to the host
10 computer, which would then proceed to build a purchase
11 order.

12 Q Was it your understanding that the RIMS system
13 operated by having the host generate the purchase
14 order?

15 A Yes.

16 Q Can you go to column 31?

17 THE COURT: Why don't you stop a minute.
18 While we're here, pull the thing up. You see these
19 after the purchase order data block described in step,
20 and then there's a number 338, and is transmitted to
21 host computer, and then there is the number 10, and it
22 continues, and there are numbers interspersed there.
23 What those numbers are references back to a particular
24 figure that are being talked about. In this instance
25 there are references back to figure 8. And it is a

1 way to say the data block is described in step 338 if
2 you go back and look at the figure 5A, and it says a
3 host computer is -- has got those lines to it and has
4 the number 10 if you go back and look at figure 5A.
5 So all of those numbers when you are reading them, if
6 you want to cross-reference back to the drawings, you
7 can do that, but if you just want to read them, you
8 just don't read -- you just don't pay any attention to
9 the numbers unless you're going back to check them.

10 Is that a fair statement?

11 MR. ROBERTSON: Yes. And thank you for that,
12 Your Honor.

13 THE COURT: Excuse me. Go ahead.

14 BY MR. ROBERTSON:

15 Q The figure 5A that's referenced here you were
16 asked about on cross-examination, correct?

17 A 5A?

18 Q Yes. If you want to go to it, it's at page 11 of
19 42 in the patent and it ends with Bates No. 904. I
20 think it was characterized as a flow chart?

21 A Yes, I have it.

22 Q So that section that we were just reading from is
23 referencing that figure; is that right?

24 A Yes.

25 Q Now, on to column 31. On this topic of

1 cross-referencing, I think you informed us that that
2 section goes over to actually the bottom of column 34;
3 is that right?

4 A Yes.

5 Q Could the RIMS system use a cross-reference table
6 to take a requisition item say from a Fisher product
7 to identify a similar item from another vendor that
8 could then requisition from that vendor?

9 A No.

10 MR. ROBERTSON: Thank you. I have no further
11 questions. Actually, I'm sorry. I misspoke. One
12 last question.

13 Q If I can take you to the '683 patent, figure 1A.
14 You were asked some questions about figure 1A and
15 figure 1B, do you recall that?

16 A Yes.

17 Q Are these two different embodiments that were
18 disclosed in your patent?

19 A Yes.

20 Q Is your invention confined to either to figure 1A?

21 MR. McDONALD: Objection, Your Honor. This
22 goes to his understanding of the scope of the claims.

23 MR. ROBERTSON: He was asked about figure 1A.
24 I'm just asking if this is an embodiment. I didn't
25 ask him anything about a claim.

1 THE COURT: Yes, you are.

2 MR. ROBERTSON: I'm just asking if this is an
3 embodiment of his invention.

4 THE COURT: These two.

5 MR. ROBERTSON: Well --

6 THE COURT: It's two different embodiments.

7 BY MR. ROBERTSON:

8 Q Let me start with figure 1A. Is figure 1A one
9 embodiment of your invention?

10 A Yes.

11 Q Is figure 1B another embodiment of your invention?

12 A Yes.

13 Q Are these merely preferred embodiments?

14 A Yes.

15 Q Do you have an understanding whether or not your
16 inventions are confined to either of those
17 embodiments. Do you have an understanding?

18 A Yes.

19 MR. McDONALD: Objection, Your Honor.

20 THE COURT: Overruled.

21 Q What's your understanding?

22 A My understanding is there are other embodiments.

23 MR. ROBERTSON: Thank you.

24 THE COURT: All right. You're going to be
25 required, Mr. Momyer, to come back here and testify

1 potentially in another part of the case either at the
2 request of the Lawson people or the request of
3 Mr. Robertson. So you're --

4 MR. McDONALD: I need to call him.

5 THE COURT: Didn't I say at the request of
6 the Lawson?

7 MR. McDONALD: No, I thought you said
8 Mr. Robertson.

9 THE COURT: I did. Instead of using you, I
10 used your client.

11 MR. McDONALD: Sorry.

12 THE COURT: It may be that either side may
13 want you back, and you can be released from your
14 obligation to be here upon your agreement to come back
15 when they request you to come back. Do we have your
16 agreement?

17 THE WITNESS: Yes, you do.

18 THE COURT: Reluctantly.

19 THE WITNESS: Yes, very reluctantly.

20 THE COURT: I don't think you're unusual in
21 giving a reluctant agreement.

22 THE WITNESS: I do want to leave the
23 courtroom right now, so yes.

24 THE COURT: Well, we wouldn't keep you in the
25 courtroom, but we would ask you to stay here.

1 THE WITNESS: Okay. It's a nice facility,
2 but I'd rather --

3 THE COURT: You can go home to Pittsburgh in
4 colder weather than we have here and come back if
5 you're needed.

6 You must give the gentleman reasonable notice
7 to get him back. And, of course, you must take
8 whatever steps are necessary to get him back here on
9 the schedule that is required by providing him
10 transportation. All right.

11 THE WITNESS: Thank you.

12 (The witness was excused from the witness
13 stand.)

14 THE COURT: Next witness.

15 Under the circumstances, is anybody offering
16 the deposition as an exhibit?

17 MR. McDONALD: No, Your Honor.

18 THE COURT: All right. Thank you.

19 All right. Next witness.

20 MR. ROBERTSON: The plaintiff would call
21 Robert Kinross, Your Honor.

22

23 ROBERT KINROSS, called by the Plaintiff, first
24 being duly sworn, testified as follows:

25

MOMYER - REDIRECT

400

1 DIRECT EXAMINATION

2 BY MR. ROBERTSON:

3 Q Sir, can you please introduce yourself to the
4 jury?

5 A My name is Robert Kinross. I'm from Ben Allen,
6 Pennsylvania, which is a suburb of Pittsburgh.

7 Q Let me stop you there. We'll get through this a
8 lot quicker if we just go step-by-step?

9 A Okay.

10 Q And the jury has heard of you, Mr. Kinross, as one
11 of the named inventors of these three patents
12 involving electronic sourcing. Is that accurate to
13 say you were one of the inventors?

14 A Yes.

15 Q You were working at Fisher-Scientific for a period
16 of time; is that right?

17 A That's correct.

18 Q When was it that you worked at Fisher-Scientific?

19 A I worked there for 24 years. From 1979 until
20 2003.

21 Q Briefly, what positions during those 24 years did
22 you hold with Fisher-Scientific?

23 A I had a number of positions. I was hired as a
24 programmer analyst specializing in CICS. And I
25 advanced to systems analyst. I also became a systems

1 programmer, which was a function of maintaining the
2 CICS software. And I advanced to manager of
3 electronic catalog development.

4 Q So you mentioned a few things there. I just want
5 to see if we can clarify them. You said you were a
6 program analyst in CICS. Can you explain to the jury
7 what that is? If you can, try in the simplest terms
8 so I can understand.

9 A A programmer analyst is a person who takes
10 requirements and turns them into actual computer code.
11 And the CICS aspect of it is to know what the CICS
12 interfaces are and implement those in the program.

13 THE COURT: What does CICS stand for?

14 THE WITNESS: CICS is a Customer Information
15 Control System. It was a control program supplied by
16 IBM to control the hardware and software of a
17 computer.

18 BY MR. ROBERTSON:

19 Q Is that kind of a tool for performing those
20 activities?

21 A It's more of an infrastructure that provides for
22 development. So you could term it as a tool, but I
23 think it would be more than a tool.

24 Q When you were at Fisher in those positions, can
25 you tell us some of the things that you did just very

1 briefly, sir?

2 A Well, the first thing I did was convert some of
3 their systems to CICS. One was a cash application
4 system that was used in accounting for paying bills.
5 Another was an order entry system that interacted with
6 customer service representatives to take orders over
7 the phone.

8 Q What is your educational background?

9 A I have a bachelor's degree from the University of
10 Pittsburgh, major economics, with a minor in computer
11 science.

12 Q When did you receive those degrees, sir?

13 A In 1974.

14 Q Since 1974 until your retirement, have you been
15 spending your entire professional career in the
16 computer field?

17 A Yes.

18 Q You were involved, as I said, in this electronic
19 sourcing invention. Were you also involved in a
20 project working with IBM during that period of time?

21 A Yes.

22 Q Mr. Momyer testified sort of the overview of what
23 was involved with respect to that, but did you have
24 personal contact with the IBM people?

25 A Yes.

1 Q Are you familiar with a program known as TV/2?

2 A Yes.

3 Q Did you have any role in identifying TV/2 as a
4 potential program that could be used in the protocol
5 type development of the inventions that resulted in
6 the patents that you have been awarded?

7 A Yes.

8 Q What did you do, sir?

9 A I was charged with researching programs that were
10 essentially search engines for documents. Fisher had
11 a large catalog and the industry was tending to put
12 catalogs on CD ROMS, and we wanted to have entry in
13 that field. So I researched a number of search
14 programs. Bard being one of them. SteBo being one
15 other. Millennium Software and Prism being others
16 that we looked at.

17 Q Did you ultimately come to the decision along with
18 the other team members that the IBM TV/2 search
19 program might be most suited for adapting to your
20 inventions?

21 A Yes, we did.

22 Q Can you tell me just generally did the IBM TV/2
23 search program need to be modified, revised,
24 reprogrammed or have aspects of it created from
25 scratch in any way?

1 A Yes.

2 Q Were you involved in that, sir?

3 A Yes, I was.

4 Q We'll talk about some of those modifications or
5 changes that needed to happen in a minute, but at a
6 high level can you us tell us, if you can give me a
7 list, say, of some of the things that needed to happen
8 with this TV/2 program that you were personally
9 involved in?

10 A Well, the first was the ability to have multiple
11 catalogs in the system. We felt that was a very
12 unique requirement that we had that would enable the
13 end user to select and deselect catalogs to be
14 searched.

15 Q Can we just run through the list first maybe of
16 everything you might recall that needed to be modified
17 with respect to TV/2, then we'll come back and go at
18 it in a little greater detail?

19 A The catalogs, there was a footer bar that we
20 needed to provide for easy navigation through the
21 system. Among the features of the footer bar were
22 creating an order list and being able to view the
23 order list, being able to accept the order.

24 We also needed specialized search functions that
25 would customize the search for electronic commerce,

1 basically. That being search by part number, search
2 by keyword with Boolean logic including "and" and
3 "ors" so that you wouldn't get unnecessary results in
4 the hit list that would be created by the search.

5 Q Let me just stop you there because you used a
6 couple of teams. I want to make sure I understand
7 what you were referring to. You said search by
8 keyword. What did you mean by "keyword."

9 MR. McDONALD: Your Honor, I'm going to
10 object. I don't think this is really tied to the
11 infringement issue or the claims of the patent at this
12 point.

13 MR. ROBERTSON: Your Honor, I'm just asking
14 the witness what modifications need to be made to
15 TV/2. What did he do in order to create the
16 invention. I'm not asking him at all about claim
17 constructions. I haven't raised a single claim term
18 yet.

19 THE COURT: He didn't say that. He said it
20 didn't have anything to do with infringement. It's
21 not relevant is his objection, I think. Isn't that
22 your objection?

23 MR. McDONALD: That's correct, Your Honor.

24 THE COURT: Why is it relevant?

25 MR. ROBERTSON: It's relevant, Your Honor, to

1 the scope of the claims as to what the inventors
2 invented and when they invented it, just as Mr. Momyer
3 testified this morning.

4 THE COURT: The fact that he testified to it
5 doesn't make it relevant. It wasn't objected to in
6 that testimony and I didn't have an opportunity to
7 address that. Now I do. You're asking him to explain
8 terms within the term "specialized search function"
9 that he did. Is this what you're talking about?

10 MR. ROBERTSON: I'm asking him to explain how
11 TV/2 needed to be modified in order to be able to
12 provide the functionality of the invention, Your
13 Honor.

14 THE COURT: How about this particular comment
15 about specialized search?

16 MR. ROBERTSON: Well, I can rephrase that
17 question.

18 THE COURT: I'm just asking you. I'm trying
19 to figure out what it is first. You're talking about
20 a specialized search function of some kind?

21 THE WITNESS: Yes.

22 THE COURT: Objection overruled.

23 BY MR. ROBERTSON:

24 Q What did you mean by that, sir?

25 A What did I mean by "specialized search function"?

1 Q I don't know if you completed your answer. I
2 was asking you about --

3 THE COURT: You asked him. It got
4 interrupted, but the objection was to what keyword
5 meant. So that objection is overruled.

6 What does "keyword" mean?

7 THE WITNESS: Keyword is any word that would
8 be found in the document. So you're basically saying
9 "find ovens" and the search would go out and find
10 everywhere there was an occurrence of ovens in the
11 document.

12 Q Is that an Aspect of your invention?

13 A Yes.

14 Q Was TV/2 able to do that when you first met with
15 IBM?

16 A Technical Viewer was able to do a search, a
17 keyword search. It's the other searches that were for
18 specific items like part number, vendor, bulletins,
19 page number that Technical Viewer wasn't able to do.

20 Q One of the things you mentioned was that there
21 were ways you needed to develop multiple catalogs in
22 TV/2, do you recall that?

23 A Yes.

24 THE COURT: Are we now finished with the list
25 of things that he did to change TV/2 or modify it or

1 recreate parts of it in order to come to the invention
2 reflected in the patent?

3 MR. ROBERTSON: No, Your Honor. Thank you.

4 THE COURT: Then go on back to that list.

5 MR. ROBERTSON: Thank you, sir.

6 BY MR. ROBERTSON:

7 Q Did you also have anything to do with creating a
8 catalog database?

9 A Yes.

10 Q Now, Fisher-Scientific -- well, let me complete
11 the list. Your Honor is exactly right.

12 Did you also have anything to do with the ability
13 to search product catalogs?

14 A Yes.

15 Q Well, do you recall you mentioned this need to
16 create a footer bar; is that right?

17 A Correct.

18 Q Did you have anything to do with creating what's
19 known as a shell program that's disclosed in your
20 invention?

21 A Yes.

22 Q Did the TV/2 program need to be modified in order
23 to create order lists within a shell?

24 A Yes.

25 Q Did you have anything to do with modifying the

1 TV/2 to create interfaces to update catalogs in EDI
2 transactions?

3 A Yes.

4 Q Let's start with that are last one first. What's
5 an EDI transaction?

6 A EDI stands for electronic data interchange.

7 Q What does that mean?

8 A It's a way to interact with separate companies
9 without human intervention. It's computer-to-computer
10 interactions that operate on a standard which is set
11 by the X12 Committee, which is a United States
12 standards setting body.

13 Q Do they have to have a common language to talk to
14 each other?

15 A Well, they called it common transaction sets,
16 which could be viewed as a language, but it's more of
17 a structure that enables computers to understand
18 messages between companies.

19 Q So they can communicate data?

20 A Yes.

21 Q Were you involved in assisting to modify the TV/2
22 program with respect to that?

23 A We wrote programs that would take the EDI
24 transaction, the price/sales catalog, and update
25 vendors' catalogs based on information provided in

1 those transaction sets.

2 Q When you say "we," who are you referring to?

3 A Me and my staff.

4 Q I mentioned this need to customize TV/2 to create
5 order lists in the shell. What's a shell?

6 A The shell was a program that used Technical Viewer
7 API to change how Technical Viewer functioned.

8 Q You used the term API. What's an "API"?

9 A API stands for Application Programming Interface.
10 It is a series of commands used to effect how a piece
11 of software will operate.

12 Q So the Technical Viewer 2 had this API interface
13 you're referring to. Could it communicate in the
14 context of your invention with this shell program you
15 had without modification?

16 A The API was used in the shell program to effect
17 changes in Technical Viewer.

18 Q So you had to develop the shell program in order
19 to communicate to TV/2?

20 A Yes.

21 Q And who had primary responsibility for that shell
22 program?

23 A The primary responsibility for documenting the
24 requirements of the shell program were mine as far as
25 the functionality concerned. The actual programming

1 of the shell was an IBM responsibility.

2 Q You also indicated that you needed to create this
3 footer bar to work within the shell. Do you recall
4 that?

5 A Yes.

6 Q Tell us the purpose of the footer bar within the
7 shell program?

8 A The footer bar --

9 MR. McDONALD: It's irrelevant, Your Honor.
10 The footer bar isn't at issue in this case.

11 THE COURT: Is it?

12 MR. ROBERTSON: Yes, it is, Your Honor. It
13 has functionality in the system that you're going to
14 hear from experts about that demonstrate infringement.

15 THE COURT: Overruled.

16 BY MR. ROBERTSON:

17 Q What's the purpose of the footer bar?

18 A The footer bar was a series of icons at the bottom
19 of a screen that would assist the end user in
20 navigating through the system with ease. It consisted
21 of a catalog selection button, an order list button, a
22 forward and backward button, a cancel button, and a
23 help button.

24 Q It was a way to navigate through the program when
25 you were performing the functionality of your

1 invention?

2 A Correct.

3 Q Now, you mentioned also this catalog database. Do
4 you recall that?

5 A Yes.

6 Q Fisher-Scientific had a very large paper catalog.

7 A Yes, they did. It was at least 2000 pages.

8 Q With tens of thousands of items offered by various
9 vendors that Fisher distributed?

10 A Correct.

11 Q It also included Fisher products, correct?

12 A It did, yes.

13 Q Were you asked to provide that paper catalog to
14 IBM so they could adapt it into a catalog database?

15 A Well, it was more than that. We were asked to
16 provide the catalog in an electronic format to help
17 them in creating the catalog database.

18 Q So just so I'm clear, did you have a
19 responsibility for giving an electronic catalog of
20 Fisher-Scientific, not a paper catalog that would then
21 need to be scanned and included into it? Was that
22 part of your responsibility?

23 A Yes. It was an electronic version of the paper
24 catalog, and it was used by SteBo to actually create
25 pages of the paper catalog.

1 THE COURT: You used SteBo to prepare the
2 pages or you said "used by SteBo." How did you take
3 the paper catalog and convert it into an electronic
4 version that you ultimately gave to IBM?

5 THE WITNESS: Okay. We had a creative
6 services department within Fisher who was responsible
7 for creating the paper catalog. And what they would
8 do is take paper in the way they wanted the catalog to
9 look and send it to SteBo. SteBo would input that
10 into their system in an electronic format to create
11 pages that could be sent to the publisher.

12 In the process of that, SteBo now had this
13 catalog in electronic format, and we used that to give
14 to IBM to produce the catalog database.

15 Q So IBM didn't have a paper catalog. They had an
16 electronic catalog from one of your vendors, SteBo,
17 which you produced to them in order for them to
18 utilize it in this electronic sourcing project that
19 you were working on with them as a subcontractor; is
20 that right?

21 A Correct.

22 Q Did they ever receive a paper catalog?

23 A Yes.

24 Q Were they having difficulties with converting it?

25 A I wouldn't categorize it as difficulty. It was

1 generally agreed that an electronic format was
2 preferable because SteBo used a tagging language to
3 describe the catalog. Technical Viewer used a tagging
4 language to describe its pages. And I was able to get
5 the definition of the tags from SteBo and provide it
6 to IBM so that they could basically write a program to
7 take the tags that were in the SteBo catalog and
8 convert them to the IBM Technical Viewer format.

9 Q What were these tags used for?

10 A Tags in both systems were essentially used to
11 describe how the data should look.

12 Q Did the tags need to be modified in order to
13 recognize and understand the electronic SteBo catalog
14 that you provided to IBM?

15 A Well, it was more like a one for one substitution
16 of tags. So a tag, for instance, that said "bold" in
17 SteBo might be "BL," and in Technical Viewer it might
18 be "BD." So you had to substitute "BL" for "BD."

19 Q So you had to reconcile those?

20 A Yes.

21 Q Let me ask you, you have had an opportunity to
22 look at the statement of work with IBM; is that right?

23 A Correct.

24 Q I want to go to an attachment to that statement of
25 work. If you would turn, please, sir, in your

1 notebook, if you have it there, Plaintiff's Exhibit
2 No. 38.

3 A Under DX?

4 Q I'm sorry. It should be under PX-38. do you have
5 that.

6 THE COURT: There is no PX-38. There's DX-1,
7 DX-107, DX-230, DX-111, and DX-30. That's all there
8 is in this notebook.

9 Hand that big book up there, please. What is
10 it in? Is it in Momyer's notebook?

11 MR. ROBERTSON: Yes, sir.

12 THE COURT: We've got it. Don't be doing
13 that. Get back there.

14 Turn to PX-38 there, would you, please?

15 THE WITNESS: Okay.

16 THE COURT: PX what?

17 MR. ROBERTSON: PX-38.

18 THE COURT: All right. Thank you.

19 BY MR. ROBERTSON:

20 Q If I could refer you to the back of that document,
21 there is a Bates number that ends 4053. It's entitled
22 "Fishier IBM Master Schedule Plan." Do you recall
23 that?

24 A Yes.

25 Q Did this master schedule plan have any name that

1 you associated with it that you and the inventors and
2 the IBM people refer to it as? Are you familiar with
3 the therm Gantt chart?

4 A Yes, Gantt chart.

5 Q Did you refer to this?

6 A This would be a Gantt chart, yes.

7 Q What's your understanding of what a Gantt chart
8 is? I believe it's G-A-N-T-T.

9 A It's a chart showing the tasks that are required
10 for some development and the length of time that those
11 tasks would take. Also the dependencies of the task.
12 Typically, the ones that are first are required before
13 you can complete the others.

14 Q And I just want to make sure we understand. I'd
15 like you to orient us with this document, if we could.
16 So let me ask you some questions about its
17 organization.

18 First, there's several headings. Do you see that
19 at the very top?

20 A The legend?

21 Q Yes. It says IV and SOW?

22 A Yes.

23 Q SOW you understood to be statement of work?

24 A Yes.

25 Q Then there's a task name, correct?

1 A Correct.

2 Q And then there's a heading for the purpose of the
3 task; is that right?

4 A Correct.

5 Q And then there's a heading that says RESP. What
6 did you understand that to mean?

7 A Who was responsible for that task.

8 Q In fact, at the top of the document does it say
9 RESP is responsible for document?

10 A Yes, it does.

11 Q Then there's a column that says DEL. Do you see
12 that?

13 A Yes.

14 Q Is there a definition of what DEL means?

15 A Yes, it says "deliverable."

16 Q There's also a column that says "depends." Do you
17 see that?

18 A Depends, correct.

19 Q Then there's a reading called "Fisher"?

20 A Correct.

21 Q What was the purpose of that heading, do you know?

22 A Well, it looks like it was specifying the number
23 of hours that particular task would take.

24 Q Next to that is a series of letters that starts S,
25 then O, then N, then D, etc. Do you see that?

1 A Yes.

2 Q Would it be safe to say those correspond to the
3 months of the year?

4 A Yes, it would.

5 Q Just under that series of letters, which you have
6 identified correspond to months of the year, there
7 seem to be sort of bars going across indicating --
8 well, you tell me what do you think that indicates?

9 A Well --

10 Q What you understand it to indicate.

11 A Right. This isn't the ideal document to look at
12 because it was actually in color. And the bars going
13 across corresponded to the bars at the bottom that say
14 critical task, non-critical task, baseline task. So
15 the fact that these aren't in color means that they
16 get all blended in black and white, whereas if they
17 were in color, they would more clearly define what it
18 was.

19 Q So your memory is that when you had this document
20 originally it was in color?

21 A Yes.

22 Q I can tell you this is the only copy we have as it
23 was produced to us, so we're going to have to just
24 labor through it. But let me ask you, did
25 Fisher-Scientific ever deliver to IBM requirements for

1 your electronic sourcing system?

2 A Yes.

3 Q Did you have anything to do with preparing that
4 document?

5 A Yes.

6 Q The first task is definitize requirements for
7 electronic sourcing program, ESP. Do you see that?

8 A Yes.

9 Q What was IBM doing with your requirements document
10 to definitize it, do you recall?

11 A Well, they were having meetings with us to talk
12 about what requirements we had and how Technical
13 Viewer could address those requirements.

14 Q Did you, in fact, engage in those meetings and
15 provide them with that information?

16 A Yes.

17 Q The next task, and trust me, I'm not going to go
18 through all of these tasks, but the next task is
19 Fisher technical familiarization and performing system
20 testing requirements. Do you see that?

21 A Yes.

22 Q Who had responsibility for that?

23 A I did.

24 Q In the column, who does it indicate?

25 A Fisher.

MOMYER - REDIRECT

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1 Q It says "deliverable." Do you see that?

2 A Yes.

3 Q What does it indicate as to whether it was
4 delivered?

5 A Y.

6 Q What does Y signify to you in this document?

7 A It is a deliverable.

8 THE COURT: Yes, in other words?

9 THE WITNESS: Yes. It means yes.

10 THE COURT: Y is yes and N is no?

11 THE WITNESS: Correct.

12 THE COURT: Is this basically a document that
13 sets forth what you were asking IBM to do, what you
14 were going to do?

15 THE WITNESS: Correct.

16 THE COURT: In connection with the electronic
17 sourcing program you were working on, and it also sets
18 forth a timetable for trying to get that done?

19 THE WITNESS: Correct.

20 THE COURT: And that includes providing
21 deliverables. What were deliverables?

22 THE WITNESS: Deliverables were something
23 that either we would provide to IBM or they would
24 provide to us. Now, when they were providing it back
25 to us we would have to ensure that was what we were

1 expecting based on the requirements.

2 Q Well, let's just focus, if I could, for just one
3 minute on task 10. "Provide Fisher existing systems
4 interface specification." Do you see that?

5 A Yes.

6 Q Did Fisher have that responsibility?

7 A Yes.

8 Q We were talking specifically about this electronic
9 catalog that you had with SteBo. Will you turn to the
10 next page at ID No. 24?

11 A Yes.

12 Q That's under a heading 23, verify, convert,
13 process, and author Fisher data. Do you see that?

14 A Yes.

15 Q Who does it indicate had responsibility for task
16 24, provide Fisher electronic text and image data for
17 the demo ESP system?

18 A Fisher.

19 Q Did Fisher do that?

20 A Yes.

21 Q Is that what you were referring to when you
22 indicated that you gave them an electronic catalog?

23 A Correct.

24 Q Task No. 31 indicates that there was a requirement
25 to obtain and deliver ESP demonstration hardware to

1 IBM, FSC in Manassas, Virginia. Do you see that?

2 A Yes.

3 Q Who had responsibility for that?

4 A Fisher.

5 Q Do you know if that occurred?

6 A Yes, it did.

7 Q Would it be fair to say that throughout this chart
8 we've been talking about, this Gantt chart as you
9 referred to, the responsibilities were fairly divided
10 between Fisher and IBM to achieve a prototype that was
11 the goal of this project?

12 A Yes.

13 THE COURT: Excuse me a minute,
14 Mr. Robertson. Just sitting there, are you getting
15 any glare from up here?

16 THE WITNESS: No, I'm not.

17 THE COURT: If anybody gets it, let us know.

18 THE WITNESS: Okay.

19 THE COURT: And we'll drop the shades.

20 Sometimes in the afternoon, it particularly affects
21 all of you over here on this side.

22 Go right ahead. Excuse me, Mr. Robertson.

23 MR. ROBERTSON: That's all right, Your Honor.

24 BY MR. ROBERTSON:

25 Q If you'd look at task No. 67 at that time page

1 that ends 056?

2 A Yes.

3 Q At that point it says, in 66, it says, Verify,
4 convert, process and author Fisher data. Do you see
5 that?

6 A Yes.

7 Q Comprehensive purpose. The purpose for that was
8 comprehensive. Can you tell us what you understand
9 that to mean?

10 A Well, yes. There were two phases of the project.
11 One was the pilot project was basically a proof of
12 concept, which took about a quarter of the Fisher
13 catalog and delivered it so that we could test it and
14 see how our specifications were being met before more
15 work would continue with the comprehensive, which was
16 the entire Fisher catalog being used in Technical
17 Viewer.

18 Q In topic ID 67, right after that verify, convert,
19 process, author Fisher data it says, Provide Fisher
20 electronic text and image data. Do you see that?

21 A Yes.

22 Q For this comprehensive electronic system, who had
23 responsibility for that?

24 A Fisher.

25 Q Can you tell us approximately how long this

1 project took to accomplish all of these tasks that
2 were identified in Exhibit No. 38, this Gantt chart?
3 Your memory might be sufficient unless you want to
4 confirm with the document.

5 A Well, with the Gantt chart, it goes from October
6 back to -- October to October. So it took about a
7 year.

8 Q Were you involved in the project that entire time?

9 A Yes.

10 Q And you have identified those things that you were
11 involved in, I believe, that were necessary
12 modifications to adapt this TV/2 for this pilot and
13 comprehensive program; is that right?

14 A Yes.

15 Q At some point in time when you met with the IBM
16 people, did they ever provide you with any marketing
17 literature with respect to the IBM Technical Viewer 2?

18 A Yes.

19 Q Do you have Defendant's Exhibit 107 in your book?

20 THE COURT: It's in that small book there,
21 Mr. Kinross.

22 THE WITNESS: All right. I'm looking at it.

23 Q Have you seen this document before?

24 A Yes.

25 Q Did you ever obtain a copy of this document?

1 A Yes.

2 Q Who gave it to you?

3 A It came on the Technical Viewer CD that was
4 provided with the product.

5 Q When you applied for a patent, did you provide
6 this document to your patent attorney so it could be
7 given to the Patent Office?

8 A Yes.

9 Q Let me just take you to Plaintiff's Exhibit No. 1,
10 which is the '683 patent, which is in all the jurors
11 books.

12 MR. McDONALD: I'll object as outside the
13 scope of infringement at this point.

14 THE COURT: I don't know what he's going to
15 do yet. There's not a question yet. So I can't rule.
16 Or if I ruled, it would be subject to a serious error
17 since I don't know what I'm ruling on.

18 Get combat ready. Don't answer the question
19 because apparently there's going to be an objection.
20 So let's wait and see what it is. Ask the question
21 and let's go.

22 BY MR. ROBERTSON:

23 Q Can you go to the cover page of the '683 patent?

24 A Yes.

25 Q Do you see the heading "other publications"?

1 A Yes.

2 Q Is there an IBM Technical Viewer 2 general
3 information manual disclosed?

4 A Yes.

5 Q Is there always an IBM Technical Viewer 2 product
6 information brochure disclosed?

7 A Yes.

8 Q Does it indicate that's undated?

9 A Yes, it's undated.

10 Q Did you turn these documents over to your attorney
11 to produce to the Patent Office?

12 MR. McDONALD: Your Honor, I'll object to
13 outside the scope of the infringement issue.

14 THE COURT: So the objection is to the
15 question did you turn these documents over to be given
16 to the Patent Office. That's the question, right?

17 MR. ROBERTSON: Yes, sir.

18 THE COURT: What does that have to do with
19 infringement?

20 MR. ROBERTSON: Because, again, Your Honor, I
21 think it's going to go to the scope of the patents
22 that are going to be involved here, but I could see
23 that a very credible argument could be made that it
24 has to do with their invalidity position.

25 THE COURT: It's actually a quite credible

1 argument. The objection is sustained.

2 MR. ROBERTSON: Your Honor, with that, I have
3 no further questions of this witness.

4 THE COURT: All right. Mr. McDonald.

5 MR. McDONALD: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. McDONALD:

8 Q Mr. Kinross, did you mention there in the last few
9 minutes something about a CD, I think you said, from
10 IBM? Did I hear that right?

11 A Correct.

12 Q What was that?

13 A It was the Technical Viewer CD that was provided
14 to be able to load the Technical Viewer onto a
15 computer.

16 Q When did you get that?

17 A I don't recall the exact date I got it. I'm
18 sure that --

19 THE COURT: Do you recall a year?

20 THE WITNESS: Yes, 1994.

21 BY MR. McDONALD:

22 Q I think you mentioned that Fisher was around that
23 time it began working with IBM working towards getting
24 its catalog on a CD ROM. Did I hear that right?

25 A No. What I said was the industry was tending

1 toward putting catalogs on CD ROM, and that's why I
2 was investigating the search engines.

3 THE COURT: You said also that your company
4 wanted to get an entry into the field, I think. Is
5 that right?

6 THE WITNESS: Yes, that's right.

7 THE COURT: So now we have an orientation.

8 BY MR. McDONALD:

9 Q So at the time Fisher was looking to get into
10 making its catalogs on CDs, other companies were
11 already doing that?

12 A My recollection is our competitors weren't doing
13 that, and Fisher was challenged to do that because the
14 catalogs in our industry were so large.

15 Q Were there non-competitors that were putting their
16 catalogs on CD at the time already?

17 A I don't know.

18 MR. ROBERTSON: Could we pull up Exhibit 1,
19 please, the '682 patent.

20 THE COURT: What did you mean by saying that
21 others were putting --

22 THE WITNESS: We knew that catalogs could be
23 put -- we knew that catalogs could be put on CDs.

24 THE COURT: For instance, you don't compete
25 with Sears.

1 THE WITNESS: Right. I don't know of any
2 vendors who had catalogs on CDs at that time. I
3 couldn't cite Sears as being an example.

4 THE COURT: But there were people, you just
5 don't remember who they were?

6 THE WITNESS: Yes, that's right.

7 Q It was some sort of a vendor; is that fair?

8 THE COURT: What his question is, was it the
9 vendors who were putting the catalogs on CD ROM or was
10 it your competitors, and you said it wasn't your
11 competitors.

12 THE WITNESS: It wasn't our competitors.

13 THE COURT: Was it vendors or not?

14 THE WITNESS: No, I don't know. I think
15 based on the Technical Viewer documentation it could
16 be like parts lists that were put on CDs.

17 THE COURT: All right. Go ahead. Excuse me.

18 BY MR. McDONALD:

19 Q Could we turn to column 2, please, and go to the
20 top of column 2 of the '683 patent, Plaintiff's
21 Exhibit 1, around lines 3 to 5.

22 THE COURT: That's in your small book there,
23 if you want to look at it, or you can look at it on
24 the screen. It's up to you.

25 Column what?

KINROSS - CROSS

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1 MR. McDONALD: Column 2, lines 3 through 5 of
2 the '683 patent.

3 Q This is some language -- and, Mr. Kinross, if you
4 need to look at the paper version, I think that's in
5 the big book.

6 THE COURT: He's got one in your book.

7 THE WITNESS: I have it here.

8 Q Oh, you have it there, too. This is in your
9 patent?

10 A Yes.

11 Q That is the patent-in-suit, right? This Exhibit
12 1?

13 THE COURT: Computer systems that are
14 capable, is that where you're starting?

15 MR. McDONALD: Yes.

16 BY THE COURT:

17 Q I'm just showing you this sentence here, Mr.
18 Kinross, that says computer systems that are capable
19 of searching databases containing a product catalog of
20 a particular vendor, for example, on CD ROM are also
21 known. Do you see that sentence?

22 A Yes.

23 Q Do you have any reason to doubt the accuracy of
24 that statement that the CD that was known was one that
25 was a product catalog of a particular vendor at least

1 at the time you filed this patent?

2 A I don't see any reason to doubt that.

3 Q If we can expand down a few lines to the rest of
4 that will paragraph, please. Your patent goes on to
5 say that, "Such systems can search for user requested
6 information about products and create orders which the
7 user can save, print or, in some cases, facsimile
8 directly to a vendor." Do you see that sentence?

9 A Yes.

10 Q Do you have any reason to doubt that was already
11 out there before you --

12 A No, I don't have any reason to doubt that.

13 MR. ROBERTSON: Objection. Outside the scope
14 of my direct. I didn't ask him any questions
15 concerning this.

16 MR. McDONALD: He did ask about this issue of
17 other CDs being out there. He testified about that.
18 It's in the patents.

19 THE COURT: He asked about the CD ROMs being
20 out there. He testified about it. You asked about
21 it, and he's just following up on what you opened.

22 MR. ROBERTSON: I didn't ask any question
23 about CD ROMs being out there. The witness said he
24 thought there was a movement to have CD ROMs, and the
25 passage that --

1 THE COURT: You asked a question that opened
2 the door and you didn't move to strike the answer as
3 nonresponsive, so that's the way life is. It's on the
4 record. He can examine about it reasonably, but not
5 excessively. All right?

6 MR. McDONALD: Understood, Your Honor. Thank
7 you.

8 BY MR. McDONALD:

9 Q So, Mr. Kinross, that sentence I just read --

10 MR. McDONALD: May I go ahead and rephrase
11 the question, Your Honor?

12 THE COURT: Yes.

13 MR. McDONALD: Thank you.

14 Q That sentence that indicates that those systems
15 could search for user information about products and
16 create orders which the user can save, print or in
17 some cases facsimile directly to a vendor, was that an
18 accurate statement at the time you filed our your
19 patent application that there were such systems that
20 were already out there?

21 A Yes.

22 Q So those systems had one catalog on them, was that
23 right?

24 A I don't know. I think so, but I don't know.

25 Q How about if I give you a chance to read the rest

1 of that paragraph for a moment, then I'll ask you
2 another question, that paragraph being the one at
3 column 2 of the '683 patent that begins at line 4 and
4 ends at line 17?

5 A Okay.

6 Q The next sentence after the one I read says, "The
7 known computer systems for searching vendor catalogs
8 are limited in that only one such vendor catalog is
9 accessible to a user at any given time." Do you see
10 that?

11 A Yes.

12 Q Does that refresh your recollection at all that
13 the system that you were aware of at the time that
14 would have a catalog on a CD ROM had one catalog?

15 MR. ROBERTSON: Object. It mischaracterizes
16 the witness' testimony.

17 THE COURT: Sustained. Just ask him if he
18 agrees with it now that it refreshes his recollection
19 or not.

20 Q Does this refresh your recollection, Mr. Kinross,
21 as to whether such known computer systems as described
22 in that sentence I just read did exist at the time you
23 filed your patent application?

24 THE COURT: The question is: Does reading
25 that sentence refresh your recollection? If it

1 doesn't, then that's okay. If it does, then say yes.

2 THE WITNESS: Well --

3 THE COURT: Your recollection just basically
4 means does it prompt your memory.

5 A Yes. I'm aware that the industry was looking at
6 ways to put catalogs on CD ROMs. I don't know of any
7 actual catalogs that were put on CD ROMs that I could
8 quote you. I know our competitors did not have them,
9 and I couldn't point to a vendor and say, Well, they
10 had their catalog on a CD ROM. I could not do that.

11 THE COURT: But your memory is that somebody
12 was doing it?

13 THE WITNESS: My memory was the industry was
14 saying this could be done, yes.

15 Q Is it fair to say that a feature of the system you
16 were trying to patent in these patents, including the
17 '683 patent, you were trying to patent a system that
18 had the capability of searching multiple catalogs from
19 different vendors?

20 MR. ROBERTSON: Objection, Your Honor. I
21 didn't ask anything about multiple catalogs.

22 MR. McDONALD: I'm setting up the contrast
23 here to talk about the what the invention was, which
24 is what I thought we were here to talk about with Mr.
25 Kinross.

1 MR. ROBERTSON: I asked what he did with
2 respect to providing IBM the Fisher catalog.

3 THE COURT: His testimony was very limited
4 and basically dealt with what was given to IBM to
5 modify the TV/2 that IBM had, what he did, the topics
6 that had to be modified, revised or part recreated in
7 the TV/2 for use in the inventions of the patent. And
8 it went to the ability to have multiple catalogs in
9 the system was the one topic. And so your objection
10 is overruled.

11 Go ahead now and ask the question again. I
12 bet you the witness doesn't know what it was.

13 MR. McDONALD: I'm a little rusty myself
14 actually.

15 THE COURT: Well, get some WD-40 and go to
16 work.

17 Q Would you agree, Mr. Kinross, that a key aspect of
18 the invention you were trying to get patents on was
19 the ability to search multiple catalogs from different
20 suppliers as opposed to just searching one catalog on
21 a CD ROM?

22 A Yes.

23 Q Why is that? Why was that important?

24 A It was important because the line of business that
25 Fisher was in was creating a group called SPS, which

1 was a Strategic Procurement Services group, and the
2 idea there was to have that group handle more of the
3 purchasing activity for our customers than just
4 purchasing Fisher products. So we wanted a way to
5 provide a tool for that group to be able to use that
6 as a resource to find products that those customers
7 may need that Fisher didn't provide.

8 Q So the idea here wasn't just to sell a customer
9 software, it was to handle all their sourcing needs;
10 is that right?

11 A It evolved to selling software. So no, that's not
12 right.

13 Q When you said why it was important, I thought you
14 were talking about this special procurement group at
15 Fisher, and I'm trying to understand how that relates
16 to this system. Were they the ones that were actually
17 going to use the system?

18 A There were three different groups the system was
19 designed to service. The Strategic Procurement Group
20 was one. The customer themselves was another. And
21 our customer service reps was the third.

22 Q Is it fair to say that in the invention described
23 in your patents involved in this case that the
24 preferred mode was to use an on-site customer service
25 representative just like the old RIMS system?

1 MR. ROBERTSON: I object. That's outside the
2 scope.

3 THE COURT: I think this was.

4 MR. McDONALD: Well, he brought customer
5 service representative --

6 THE COURT: I know, but not every answer
7 generates an opening of the door. I sustain the
8 objection.

9 BY MR. McDONALD:

10 Q Let's go back to --

11 THE COURT: Just kind of go around with what
12 he was doing there on direct.

13 MR. McDONALD: Okay.

14 Q Let's talk now about the TV/2 system, Mr. Kinross,
15 at the time you started talking to IBM. Now, there
16 was such a system that was available from IBM the day
17 you started talking to them about searching, right?

18 A There was what?

19 Q A TV/2 system.

20 A There was a TV/2 system, yes.

21 Q And that system already had an application program
22 and interface on it, right?

23 A My understanding is that it came with a sample
24 program that showed the use of the API, correct.

25 Q Was it your understanding specifically that the

1 off-the-shelf version of TV/2 provided an application
2 program and interface and that would allow the passing
3 of data?

4 A No.

5 Q Mr. Kinross, do you recall on December 2 of 2009
6 in this case you gave a deposition?

7 A Yes.

8 Q And you swore to tell the truth at this
9 deposition, correct?

10 A Yes.

11 Q And you did tell the truth, right?

12 A I tried to, yes.

13 Q Could you turn, please, to page 108 of your
14 December 2, 2009 deposition?

15 A All right.

16 Q Do you see there beginning at line 13 there's a
17 series of a couple or three questions here that I'd
18 like to show you. Line 13 of page 108, the question:
19 Did you understand that the TV/2 product off the shelf
20 would allow to you create a shopping list by selecting
21 items and then pass that list to another application
22 such as a parts ordering system? After an objection
23 there was an answer. "My understanding was the off
24 the shelf version provided application programming
25 interface, and that's what would allow the passing of

1 data."

2 A Right. That's true.

3 THE COURT: That wasn't inconsistent with
4 what he said earlier.

5 THE WITNESS: That's right.

6 THE COURT: Your question was different. So
7 it really doesn't impeach him. He said that earlier,
8 basically. I think he said it almost in those words.

9 THE WITNESS: Right. This lets you do it,
10 but it didn't do it. You had to program it.

11 THE COURT: Whether he did it or whether he
12 had the facility to do it.

13 THE WITNESS: Correct.

14 THE COURT: I think in both places he said
15 the same thing.

16 THE WITNESS: Thank you.

17 MR. McDONALD: I misunderstood.

18 THE COURT: I just wanted Mr. McDonald to
19 know that I was paying attention.

20 MR. McDONALD: I have no doubt.

21 BY MR. ROBERTSON:

22 Q Did the Technical Viewer 2 system have the
23 capability of searching databases that were on a
24 computer other than in the form of a CD ROM?

25 A Yes.

1 Q That was before Fisher started working with IBM,
2 right?

3 A Yes.

4 Q Now, this research, I think you mentioned you did
5 some research as to different products and through
6 that process you picked the TV/2 product; is that
7 right?

8 A That's correct.

9 Q And you picked the TV/2 product because you
10 thought that would be a good fit for the purposes you
11 were looking to fulfill, correct?

12 A There were a number of reasons we picked the
13 Technical Viewer product. Do you want me to go into
14 those reasons?

15 THE COURT: Was that one of them, that it was
16 a good fit?

17 THE WITNESS: I wouldn't specify it as a good
18 fit. I thought it was a development platform that
19 could be used to achieve what we were trying to
20 accomplish.

21 Q But A good fit was one of the factors you used to
22 pick the TV/2 system; is that fair?

23 A No. I think a good fit would be more inclined to
24 selecting a package that had all the features and
25 functionality that your business required and you just

1 plug it in. That to me is a good fit.

2 Providing an architecture that could lend itself
3 to development is actually why we chose Technical
4 Viewer.

5 Q But architecture, what do you mean by that?

6 A Having an API was very appealing so that we could
7 effect changes that we needed to make.

8 Q Is that what you meant by architecture was just
9 that?

10 A Yes, it was a piece of architecture. The fact
11 that in their documentation they mention large volumes
12 of data was another feature that we liked.

13 Q Was it relevant to your decision that the TV/2
14 product operated on this IBM OS/2 operating system?

15 A It didn't hurt.

16 Q Did it help?

17 A It neither hurt nor helped. We were a multi
18 platform environment at that time. We were very
19 familiar with IBM's software. We were very
20 comfortable with working with IBM because they were
21 providing hardware and software for Fisher for their
22 mainframe systems as well as their client server based
23 systems. We felt that IBM was a stable company and
24 supported their products. So the support issue was a
25 factor in choosing Technical View.

1 Q At the time was the RIMS system built on OS/2 IBM
2 operating system?

3 MR. ROBERTSON: Your Honor, I didn't ask
4 anything about the RIMS system.

5 THE COURT: Mr. McDonald, it seems to me
6 that's beyond the scope of the direct examination.

7 MR. McDONALD: I guess we can come back to
8 that, Your Honor.

9 BY MR. McDONALD:

10 Q Now, with the IBM system as it existed when you
11 started working with them regarding TV/2, did it have
12 the capability of putting technical publications on a
13 single CD ROM?

14 A Yes.

15 Q Technical publications could include things like
16 bulletins and catalogs, right?

17 A The only thing that they mentioned as far as what
18 they used Technical Viewer for was a parts catalog in
19 Europe for a car company. And the Manassas people
20 indicated that they worked with the U.S. Navy on their
21 documents but didn't specify what documents the Navy
22 was using it for.

23 Q Did you work with someone from IBM named Pam Eng?

24 A Yes, Pam Jenkins at the time, but I think she's
25 been married and changed her name.

1 Q She was working on this project from the IBM side;
2 is that right?

3 A Correct.

4 Q Chuck DeNaris, is that also a name that's familiar
5 to you?

6 A Yes, he was the salesman from IBM.

7 Q So you interacted with him on this project?

8 A He attended the meetings and yes.

9 Q The IBM system could do a word search, correct?

10 A Correct, which we termed keyword search.

11 Q But that was already in existence before you
12 started talking to IBM about the TV/2, right?

13 A That was part of the Technical Viewer, yes.

14 Q Then you choose the TV/2 system because of its
15 features and because you didn't want to reinvent the
16 wheel, right?

17 A Correct. The prospect of writing a search engine
18 when others we are available on the market really
19 didn't make sense to us to rewrite something that
20 already existed if it performed up to our
21 specifications.

22 MR. McDONALD: I have no further questions.
23 Thank you.

24 THE COURT: Any redirect?

25

1 REDIRECT EXAMINATION

2 BY MR. ROBERTSON:

3 Q With respect to this multiple catalog capability
4 on TV/2, did TV/2 have the capacity to have multiple
5 catalog data right off the shelf?

6 A No, I don't believe it did.

7 Q Did you have to do anything or assist in any way
8 to modify TV/2 in order to be able to accommodate that
9 size of data volume that would be involved in such a
10 performance?

11 A Yes. There were two aspects of that. One was to
12 create the functionality of the catalog icon which
13 would open one or more catalogs to be searched or
14 close catalogs if you didn't want that particular one
15 searched.

16 And also Fisher had a requirement that the system
17 would not be useful if you didn't provide a
18 three-second response time back to the end user when
19 it was searching catalogs. And my understanding is
20 there was a problem with Technical Viewer once the
21 entire Fisher catalog was loaded onto the system in
22 obtaining a three-second response time. So a
23 different indexing mechanism had to be developed to
24 facilitate that requirement.

25 Q What was the indexing mechanism called?

1 A It was called Super Index.

2 Q Were you involved at all on that project?

3 A Not -- well, only from the standpoint of it being
4 a requirement of Fisher for Technical Viewer to
5 achieve a three-second response time. But as far as
6 designing the Super Index and coding it, no, that was
7 Technical Viewer that was responsible for that.

8 Q So IBM was responsible for making that
9 modification?

10 A Yes.

11 Q Were they made to make the TV/2 program more
12 responsive in accordance with your requirement?

13 A Yes.

14 Q Was that necessary in order to accommodate the
15 volume of catalog data?

16 A Yes.

17 Q Did you indicate that you had problems with this
18 response time simply with just one catalog loaded on
19 TV/2?

20 A I didn't. IBM indicated there was a problem and
21 they wouldn't deliver the catalog until it was fixed.

22 So --

23 Q So they went about fixing it to your
24 specifications?

25 A Yes.

KINROSS - REDIRECT

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1 MR. ROBERTSON: Thank you. I have nothing
2 further.

3 THE COURT: Can he be excused permanently or
4 do you need him back?

5 MR. McDONALD: I need him back, Your Honor.

6 THE COURT: All right. Mr. Kinross, you may
7 be required to come back here. And rather than have
8 you stay around, if you'll agree to come back when
9 they call you, and they'll give you as much notice as
10 they can, then you can leave.

11 THE WITNESS: Okay.

12 THE COURT: Under those conditions. Is that
13 all right with you?

14 THE WITNESS: Yes, that's fine.

15 THE COURT: All right. Well, have a safe
16 trip back to Pittsburgh.

17 THE WITNESS: All right. Thank you.

18 Should I leave these documents here?

19 THE COURT: Yes, just leave them there.

20 (The witness was excused from the witness
21 stand.)

22 THE COURT: Next witness.

23 MR. ROBERTSON: Yes, Your Honor. The
24 plaintiff would call Mr. James Johnson.

25 THE COURT: Are you-all all right or do you

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1 need a recess? I didn't think to ask you all. Are
2 you okay now?

3 THE JURY: Yes.

4 THE COURT: Okay. If anybody needs anything,
5 make sure you let us know.

6 All right. Let's go. Who?

7 MR. ROBERTSON: James Johnson, Your Honor.

8 (Transcript continues on page 448.)

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